IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No.: 10/820,979

Applicants: ENDLER

Filed: April 7, 2004

Title: Methods and Apparatuses for Viewing Choices

and Making Selections

Examiner: Steven B. Theriault

Art Unit: 2179

Customer No.: 37123

Certificate of Transmission/Mailing

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Date

Thomas F. Lebens Registration No. 38,221 Attorney for Applicants

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)

Hon. Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Dear Sir:

Reconsideration is respectfully requested of the Patent Term Adjustment that was indicated in the Notice of Allowance to be 394 days in respect of the above-identified application. Applicants respectfully submit that the Patent Term Adjustment should be 466 days under 37 C.F.R. §§ 1.703-1.705 and 35 U.S.C. § 154(b) since the initial determination of Patent Term Adjustment improperly overlaps A period delay with B period delay, instead of adding such delays.

Reference is made to 35 USC 154(b)(2)(A) (the "Actual Delay" limitation). The

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statute limits Patent Term Adjustment where USPTO delays overlap: "To the extent that periods of delay specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed." 35 USC 154(b)(2)(A). Granting either the greater of the A period (i.e., delay under 35 U.S.C. § 154(b)(1)(A)(i)) or the B period (i.e., delay under 35 U.S.C. § 154(b)(1)(B)) is not in accordance with the statute and the patentee is due a term extension in an amount equal to the A period plus the B period, except for any actual overlap between the two periods. The B period begins when the USPTO has failed to issue a patent within three years, not before. In calculating these two periods, computation of the A period begins at 14 months following the filing date and calculation of the B period begins at three years following the filing date.

Thus, computing the patent term adjustment consistent with 35 USC 154(b)(2)(A), Applicants respectfully submit that the patent term adjustment should be 466 days assuming that the patent issues August, 4, 2009, which is the Tuesday before the date that is 28 weeks after the mailing date of the Notice of Allowance.

The present application was filed April 7, 2004. As supported by the attached AIPA Term Calculation Report, the A period delay of 37 C.F.R. § 1.703(a) is equal to 457 days (see Row A on page 2). The B period delay of 37 C.F.R. § 1.703(b) is equal to 72 days assuming the patent issues August 4, 2009 (see Row B on page 2). The period of actual overlap of the A period delay and the B period delay is 0 days (see page 6). Thus, the non-overlapping portion of the A period delay and the B period delay is 529 days (see page 6). Applicants have delayed a total of 63 days under 37 C.F.R. § 1.704 (see Rows D and N on page 3 and 5). The attached AIPA Term Calculation Report is calculated consistent with 35 USC 154(b)(2)(A). Thus, the patent term adjustment should be 466 days (457+72-32-31 days), not 394 days as printed in the Notice of Allowance (see pages 1 and 4).

This patent application is not subject to a terminal disclaimer.

This application for patent term adjustment is timely filed no later than the payment of the issue fee under 37 C.F.R. § 1.705(b).

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According to 37 C.F.R. § 1.705(b)(1), the fee of 37 C.F.R. § 1.18(e) is provided

herewith.

Respectfully submitted,

Dated: 41612009

Thomas F. Lebens Reg. No. 38,221 Attorney for Applicants (805) 781-2865

Attachment: AIPA Term Calculation Report (6 pages)

Address all correspondence to: FITCH, EVEN, TABIN & FLANNERY 120 So. LaSalle Street, Ste. 1600 Chicago, IL 60603



AIPA Term Calculation Report

	APPLICATION	APPLICATION INFORMATION	
Docket Number:	81490 7114	User Name:	Pomiak, Natalie
Application Number:	10/820,979	Firm/Company Name:	Fitch Even Tabin & Flannery
Filing Date:	04/07/2004	User Comments:	
Title/Inventor(s):	METHODS AND APPARATUSES FOR VIEWING CHOICES AND MAKING SELECTIONS; Sean Christopher Endler, San Francisco, CA (US)	Calculation Generated:	03/06/2009 08:45:34 PM ET

Earliest Referenced Application under 35 USC § 120, 121, or 365(c):	Filing Date (US National Application):	Net Adjustment Credits:	Net Adjustment Debits:	Patent Term Adjustment:	AIPA Patent Term End Date:
04 / 07 / 2004	04 / 07 / 2004	529 Days	63 Days	466 Days	07 / 17 / 2025 (1)

APA TERM CALCIT ATTON STRAMARY

(1) Assumes payment of all maintenance fees, no intervening acts, and no 33 USC 156 regulatory extensions. Terminal disclaimer(s) filed in this case, if any, may result in an earlier term end date. Without adjustment, the term would end on 04/07/2024.

CONDA (BS)	COMPARISON TO USPTO PAIR PTA TAB (2) (Based on PAIR Data from 03/06/2009)		
	PAIR PTA Tab	Your Calculation	Comparison
Credit Days (USPTO Delay):	457	529	×
Debit Days (Applicant Delay):	63	63	Match
Total Patent Term Adjustment Days:	394	466	×

(2) Comparison is shown for USPTO Dalay, Applicant Delay, and Total Paten Term Adjustment fields displayed on USPTO PAIR Paten Term Adjustments (PTA) rab on 63:06(2):09. See the full PAIR PTA tab, file wrapper (e.g., Notice of Allowance, PTA-related petitions), and assued patent for complete information on USPTO-calculated PTA.

Bvent	RULE CALCULATION SUMMARY (3) Rule Invoked	Related Event	Exclusion	Debit	Credit
	14-Month PTO First Action		Days (4)	Days (5)	Days (6)
04/07/2004 Filing Date under 35 USC 111(a) (US National Application)	PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 121 not late than 11 manifies after the date on which the application was filled under 35 USC 111(3) or fulfilled the requirements of 35 USC 371 in an interactional application. Period of adjustment (redist) begins on the day after the date that is 4 monitis after the date on which the application was filled under 35 USC 371 and ending on the date of maining of either an action made 35 USC 132, or a notice or dalowance under 35 USC 132, or a notice or dalowance under 35 USC 133, or a notice or dalowance under 35 USC 133, or a notice or dalowance under 35 USC 133, or a notice or dalowance under 35 USC 134 (1)(1)(4)(1);37 CFR 1.702(a)(1), 1.702(a)(1),	First PTO Action: 09/07/2006 Non-final Action			457
	3-Year PTO Issue of Patent				
04/07/2004 Filing Date under 35 USC 111(a) (US National Application)	PTO must issue a patent within 3 years (not including exclusions) after the date on which the application was filled under 35 USC 11(4) or the manotical stage commerced under 35 USC 371(6) or (f) in an international application. Period of Sastament (credible) begins on the day latter the clue that is 3 years after the clue on which the application was filled under 35 USC 111(a) or the national stage momerced under 35 USC 37(10) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. 35 USC 11(4)(NB), 37 CFR 1.702(b), 1.703(b).	lssue Daw: 08/04/2009 Issue Date			72
	You have elected to analyze this rule without applying the USPTO 37 CFR § 17-727 (A rule Deby limitation in determining Credit Days under this rule. This is consistent with DC District Court ruling in Wyeth et al. v. Dudas, No. 07-1492 (D.D.C. September 30, 2008).				
	3-Month Applicant Response to Notice or Action				
06/21/2004 Notice to File Missing Parts (nonprovisional application)	Period of adjustment (cordits) shall be reduced for the period in excess of 3 months taken to repty to any PTO notice to exterior making any specifion, dipetion, argument or other request, beginning on the day after the date that is 3 months argument or other request, beginning or the day after the date that is 3 months argument of the control of th	Applicant Response. 09/09/2004 PAIR Indication that Application is		Φ	
	Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C), 37 CFR 1,705(c).	Complete			
	You have indicated that no 1.705(c) Showing of Due Care was made.				

		3-Month Applicant Response to Notice or Action			
_	09/07/2006 Non-final Action	Period of adjustment (credits) shall be reduced for the period is excesse of 3 months are no rept's on any PTO motion or extloum making any rejection objection, objection argument, or other request, beginning on the day far the date that is 3 months argument, or other request, beginning on the day far the date that is 5 months and the date that is 5 months on the case the test of the period. For expenditure, 15 months are additionable to the period or arbamost seatment period for rept's at the action or notice has no effect on this deadline, 35 USC 134 (b)(2)(C)(5); 37 (PR, 1744(b)).	Applicant Response: 01/08/2007 Reply after Non-final Action under 37 CFR	32	
		Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC $154(b)(3)(C)$; 37 CFR 1.705(c).			
		You have indicated that no 1.705(c) Showing of Due Care was made.			
		4-Month PTO Response to Applicant Reply			
™	01/08/2007 Reply after Non-final Action under 37 CFR 1.111	PTO must respond to a reply under 35 USC 132 or later than a contains after the date which here perly was fifted. The period of edistarent (restlict) legis on the day after the date data is 4 months after the date on the months after the date on the months of the first of the Linds of Lin	PTO Responser 03/21/2007 Final Rejection		0
		3-Month Applicant Response to Notice or Action			
~	03/21/2007 Final Rejection	Period of adjustment (credits) shall be reduced for the period in excesse of months attach to reply be any PTO notice or action maling pur projection, objection argument, or other request, beginning on the day flart the date of maining or transmission of itself of the course hast is 3 ments on the date that is 5 ments on the date the reply was filled. The period, or shortened stratumy period, for exploration from the course in the action or notice has no effect on this deadline, 35 USC 154 (b)(2)(C)(ii), 57 RR 1.744(b).	Applican Response: 06/19/2007 Request for Continued Examination under 35	•	
		Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(e).	U.S.C. 132(b)		
		You have indicated that no 1.705(c) Showing of Due Care was made.			
		4-Month PTO Response to Applicant Reply.			
ı ن	06/19/2007 Request for Continued Examination under 35 U.S.C. 132(b)	PTO must respond to a reply under 35 USC 132 not later than A months after the date which the reply was fifted. The period of adjacement (reselts) begins on the day after the other haif \$4 months after the state a reply under 37 CRR 1.11 or in ordinate which \$7 CRR 1.11 SP (30) was find an ending on the under 37 CRR 1.11 SP (30) was find an ending on the under 37 CRR 1.11 SP (30) was find an ending on the maining date of the replacement of the state of the	PTO Response: 08/09/2007 Non-final Action		. 0

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tinued Examination		ponse to Notice or Action	duced for the period in excess of 3 months an making any operiod, to obecton, the day after the date that is 3 months of, or forther communication and ending of, or shortened statutory period, for reply and or shortened statutory period, for reply and this deadline, 35 USC 154 (0)(2)(C)(ii). Action under 37 CFR		wing of Due Care was made.	onse to Applicant Reply	SSC 132 not later than 4 months after the PTO Response: PTO Response: PTO Response: PTO Response: PTO Response: PTO Response: PTI Respo	grouse to Notice or Action	chocaed for the period in excess of 3 months on making any rejection, objection, and the day after the date that is 3 months of the Office communication and eating a 05407,2008 do shortened standardy period, for repty Request for on this deadline 35 USC 154 (b)(2)(C)(f)). Examinition understa		
			so	3.					ø		
Exclusion for Continued Examination	2. Year PTO Issue Requirement does not include the pariod consumed by the continued currentation of the application under 3.0 ISC 132(b), beginning on the face on which a request for continued communities of the application under 3.0 ISC 12(b) was filled and carried on the depresent under 3.0 ISC 12(b) was filled and carried on the destroyer the application under 3.0 ISC 15(b) (18(b); 3.7 CFR 1.702(b)(l), 1.703(b)(l).	3-Month Applicant Response to Notice or Action	Period of saljustment (credits) shall be reduced for the period in excess of 3 months argue to repty to say PTO notion or action making any repection, objection, sugment, or other request, beginning on the day after the date that 15 months for the that date that 15 months on the date that 15 months on the date of the constraint and rading on the date of the communication and rading on the date of the communication and rading on the date of the cytical properties of the communication and rading on the date of the cytical properties o	Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months, 35 USC $154(b)(3)(C)$; 37 CFR 1,705(e).	You have indicated that no 1.705(c) Showing of Due Care was made.	4-Month PTO Response to Applicant Reply	PTO must respond to a reply under 35 USC 132 not later than 4 months after the day on which respire to the reply was filled. The period of dijestment decidals begins on the day after the date that is 4 months after the date a neply under 37 CPR 1.11 or morphisme with 37 CPR 1.120 was filled and ending on the mitting date of either an action under 35 USC 132, or a notice of allowance under 33 USC 134, and an additionable of the second fill and a second fill a	3-Month Applicant Response to Notice or Action	Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to way PTO notice or action making any typication, objection, assument to other request, beginning on the day after the date that 15 a months after the date of mailing or transition of office communication and red adding on the date the reply was flied. The period, or shortened standary period, for reply after the theory was flied. The period, or shortened standary period, for reply $(2RR 1/R40)$.	Where applicant shows, in spite of all the care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 134(b)(3)(C); 37 CFR 1.705(c).	You have indicated that no 1.705(c) Showing of Due Care was made.
2000/01/20	Request for Continued Examination under 35 U.S.C. 132(b)		08/09/2007 Non-final Action				11/09/2007 Reply after Non-final Action under 37 CFR 1.111		02/07/2008 Final Rejection		

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					31				
			455						
	PTO Response: 07/21/2008 Non-final Action	4	08/04/2009 Issue Date		Applicant Response: 11/21/2008 Reply after Non-final Action under 37 CFR				PTO Response: 01/27/2009 Notice of Allowance under 35 USC 151
4-Month PTO Response to Applicant Reply	PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was fifted. The period of dissinsment (estable loggins on the day after the date that is 4 months after the date a reply under 37 CFR 1.11 or in organization with 57 CFR 1.11 or in organization with 57 CFR 1.13 to was filed and ending on the mailing date of either an exton under 35 USC 132, or a notice of allowance under 3 USC 132 to a notice of allowance under 3 USC 131, 1.705(a)(2)(A).	Exclusion for Continued Examination	Very PrO I stee Requirement does not include the pariod consumed by continued examination of the application mader 35 USC 123(D) beginning on the entering the continued examination of the application mader 35 USC 123(D) was fit of an endering on the dather the particular mader 35 USC 125(D) was fit of and entition of the dather to parent was issued. 35 USC 154(O)(D)(D); 37 CRR 1,74(D)(O), 1,77(D)(D)	3-Month Applicant Response to Notice or Action	Period of adjustment (credits) shall be reduced for the period in excess of 3 months attent or orgh's near PTO notice or earlow making any rejection, objection, argument, or other request, beginning on the day filter the due that is 3 months are the date of mailing or transmission of the force communication and ending on the date force communication and ending on the date the date of mailing or transmission of the Organ Communication and ending on the date the reply was filed. The period, or software a stantory period, for reply 37 cFR, 174(b).	Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1.705(c).	You have indicated that no 1.705(c) Showing of Due Care was made.	4-Month PTO Response to Applicant Reply	PTO must respond to a reply under 35 USC 132 not later than 4 months after the convention theory was filled. The period of designment (clearly begins on the day after the control to the
	05/07/2008 Request for Continued Examination under 35 U.S.C. 132(b)	8006/20/50	Request for Continued Examination under 35 U.S.C. 132(b)		07/21/2008 Non-final Action				11/21/2008 Reply after Non-final Action under 37 CFR 1.111

		3-Month Applicant Response to Notice or Action				
4	01/27/2009 Notice of Allowance under 35 USC 151	bendo of adjustment credits) shall be reduced for the period in excess of 3 months nearen or prio in any PTO notice or action mading any rejection, objection, is strengtoned, beginning on the day after the due that is namelia after the the other request, beginning on the day after the due that is namelia or manission or not hold The communication and ending or manission or not hold recommunication and ending, set in the action or notice has no effect on this deadline. 35 USC 134 (b)(2)(C)(i); 37 CR 1.7(4(4)).	Applicant Response: 04/27/2009 Issue Fee Payment under 35 USC 151		0	
		Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. 35 USC 154(b)(3)(C); 37 CFR 1,705(c).				
		You have indicated that no 1.705(c) Showing of Due Care was made.				
		4-Month PTO Issue of Patent				
~	04/27/2009 Issue Fee Payment under 35 USC 151	PTO must issue a patent not later than 4 months after the date on which the issue where spid indust's 3 USC 13 and all outstanding requirements were estificited. The period of adjustment (rectifs) begins on the day after the date it at a months are the date that is 4 months and ends on the day after the date it at a months and ends on the day the period of adjustments were satisfied and ends on the day the patent issues. 35 USC 154(9)($(X_i)(Y_i)(Y_i)$; 37 CFR 1.702(a)(4), 1.703(a)(6).	Issue Date: 08/04/2009 Issue Date		3,840	•
[otal]	Total Exclusion, Debit, and Credit Days:	Credit Days:		1233	63	529

466 (3) Calculations of Debit, Credit, and Exclusion Days are determined by the rule assignments, assignments of related events, and analysis options in the Apply Term Rules tab. The patent professional using this system is responsible for reviewing and updazing the Apply Term Rules tab to ensure all data is complete, correct, and consistent with their udgment and interpretation of applicable legal authority. Patent Term Adjustment Days (8):

Net Exclusion, Debit, and Credit Days:

Overlap Days (7):

529

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4) Exclusion Days are periods which are not included in determining the end of the 3-year period after the date on which the application was filed under 35 USC 11(ft), or the national stage commenced under 35 USC 371(b) or (f) in an international application, used to determine credits under the 3-Year PTO Issue of Partent rule. See 35 USC 154(b)(1)(B)(i)-(iii); 37 CPR 1.702(b)(1)-(5), 1.703(b)(1)-(4).

(3) Debit Days are days where grounds for reduction of period of adjustment of patent term exist. See, e.g., 37 CFR 1.704. Debit Days are sometimes referred to as Applicant

(7) To the extent credit periods werlap other credit periods, debit periods overlap other debit periods, overlaps are (6) Credit Days are days where grounds for adjustment of patent term exist. See, e.g., 37 CFR 1.702, 1.703. Credit Days are sometimes referred to as USPPO Delny. subtracted so that each calculat day generates at most one credit day, one debit day, and one exclusion day.

(8) Parent Term Adjustment Days equals Net Credit Days minus Net Debit Days, but is not less than zero.